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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,533	08/27/2001	Gerd M. Muller	740105-78	2799
7590 07/14/2004				
NIXON PEABODY LLP 401 9TH ST. N.W. SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/938,533	Applicant(s) MULLER ET AL.	
	Examiner Jonathan ML Foreman	Art Unit 3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 02 June 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

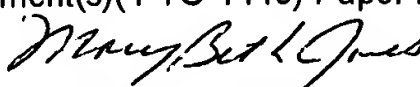
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


MARY BETH JONES
ACTING SUPERVISORY PATENT EXAMINER


JMLF

Continuation of 2. NOTE: Claim 1 includes the new limitations "rotationally and axially" and "after" requiring a further consideration and/or search. Applicant's request for reconsideration of the finality of the rejection of the last Office action is not persuasive and, therefore, the finality of that action is not withdrawn. Applicant has asserted that the Examiner rejected claim 20 in the final office action, but did not initially address this claim in the first office action. As Applicant has pointed out, the Examiner did not address the limitations as defined by claim 20. This is because claim 20 was not included in the rejection. It was lumped together with claims 19, 21 and 22 inadvertently at box 6 of PTO-326 and at the heading of the rejection. The examiner did not address the limitations of claim 20. As can be seen on PTO-326 at box 4a, claim 20 has been withdrawn from consideration. Additionally, Applicant has asserted that the features of claims 2, 3, 4, 5, 10 and 11 were not addressed by the Examiner. However, claim 2 was addressed at lines 7 - 9 of the paragraph beginning "In reference to claims 1 - 7..." of page 2 of the final action. Claim 5 was addressed at lines 9 - 11 of that same paragraph. Claims 10 and 11 were addressed at page 3 of the action at the paragraph beginning "In reference to claims 10 and 11". Claims 3 and 4 are merely functional limitations providing no additional structure to the claim. The Examiner maintains that the references were fully and correctly applied in the non-final and final office actions and that the finality of the last action is proper.